

A S Munusamy v Kumpulan Sua Betong Sdn Bhd

HIGH COURT (KUALA LUMPUR) — ORIGINATING MOTION NO R3-
25-76-94

LOW HOP BING JC

19 MAY 1995

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Labour Law — Employment — Retirement — Employee unfit to work on medical grounds — Whether employer has final right to decide whether to allow employee to retire — Interpretation of provision in collective agreement

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Labour Law — Industrial Court — Award — Enforcement of award — Whether court limited to following interpretation award — Whether Industrial Court had jurisdiction to examine Employment Act 1955 to determine terms complained of — Industrial Relations Act 1967 s 56

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The applicant was a member of the All Malaysian Estates Staff Union ('AMESU'). He had entered into a collective agreement ('the collective agreement') with the Malaysian Agricultural Producers Association ('MAPA'), a trade union of employers of which the respondent was a member. On 25 April 1989, the applicant resigned from the respondent's employ. The applicant's employment was not

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terminated by the respondent but he had left without prior approval of the estate. No doctor or panel agreed between the estate and AMESU had been appointed to determine the applicant's fitness to work. The decision of the respondent therefore was not to release the applicant on retirement on medical grounds. On 15 October 1989 AMESU applied to the Industrial Court under s 33(1) Industrial

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Relations Act 1967 for an interpretation of art 47 of the collective agreement. The Industrial Court held that even if a doctor or a panel of doctors have given a medical report on the claimant, the final decision to release or not to release the employees on retirement on medical grounds must rest with the estate. On 24 July 1990, through

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AMESU, the applicant filed a complaint of non-compliance under s 56 Industrial Relations Act 1967 stating that art 47 of the collective agreement and the Interpretation Award had not been complied with, in so far as it concerned the applicant. This application was duly heard and dismissed by the Industrial Court vide the Enforcement Award which is now being challenged by the applicant herein. Counsel

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for the applicant submitted that the Industrial Court had misconstrued the Interpretation Award. In his opinion, since the applicant was found unfit by all doctors, the applicant should have been allowed to retire on medical grounds. The applicant further submitted that the Industrial Court in the Enforcement Award had taken irrelevant

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matters into account, namely art 47 (a) of the collective agreement; also that since the Industrial Court in the Enforcement Award had refused to consider s 14 of the Employment Act 1955 ('the Employment Act') and also Regulation 4 (1)(c) of the Employment (Termination and Lay-Off Benefits) Regulations 1980 ('the 1980

Regulations'), made under the Employment Act, the Industrial Court therefore had failed to take relevant matters into consideration. A

Held, dismissing the applicant's application:

- (1) Article 47 establishes the following principles: (i) when an employee opts for retirement on medical grounds, his option must necessarily be approved by the estate as he cannot just leave his employment or retire without the prior approval of the estate; (ii) whether or not an employee was unfit for work is to be determined by a doctor or a panel of doctors agreed upon by the estate and AMESU; and (iii) even if a doctor or a panel of doctors have given a medical report, the final decision to release the employee on retirement on medical grounds must rest with the estate (see p 238E-G). B C
- (2) The Industrial Court has not committed any jurisdictional error on the face of the record or any error of law. The question or issue of the employer's fitness to work must first be determined by a doctor or panel of doctors agreed upon by the estate and AMESU. Only after this pre-requisite has been fulfilled that in all equity and good conscience, the estate must allow him to go on retirement on medical grounds (see p 239A-B). D
- (3) The Enforcement Award read together with the Interpretation Award was made in context of the interpretation of art 47 of the collective agreement. The Industrial Court in handing down the Enforcement Award is obliged by s 33(4) of the Act to follow the Interpretation Award. Both these awards relate to art 47 which is most relevant, material and pertinent. Therefore no irrelevant matters had been taken into account (see p 239D-E). E F
- (4) In a complaint of non-compliance, under s 56 of the Act, the Industrial Court has no jurisdiction to embark on an examination of the Employment Act to determine the meaning of the terms complained of (see p 239G-H); *Dragon & Phoenix Bhd v Kesatuan Pekerja-Pekerja Perusahaan Membuat Textil Dan Pakaian, Pulau Pinang & Anor* [1991] 1 MLJ 89 followed. G
- (5) The 1980 Regulations and the Employment Act were irrelevant matters which the Industrial Court had quite rightly refused to consider therein since they were never pleaded in the applicant's complaint nor was any evidence adduced to support such claim (see p 240D). H
- (6) Even if the 1980 Regulations and the Employment Act were applicable, the proper forum for a claim under the Employment Act is the Labour Department pursuant to an application under s 69 of the Employment Act 1955. The Industrial Court is not the forum for a claim under the Employment Act (see p 240E-F). I

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[Bahasa Malaysia summary]

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Pemohon merupakan ahli Kesatuan Pekerja-pekerja Estet Malaysia ('kesatuan tersebut'). Dia telah membuat suatu perjanjian kolektif ('perjanjian kolektif tersebut') dengan Persatuan Pengeluar Hasil Pertanian Malaysia ('MAPA'), suatu kesatuan majikan yang mana responden merupakan ahlinya. Pada 25 April 1989, pemohon telah meletak jawatannya. Penggajian pemohon bukannya dihentikan oleh responden tetapi dia telah meninggalkannya tanpa mendapat persetujuan dari responden terlebih dahulu. Oleh kerana tiada doktor ataupun panel doktor yang dipersetujui dilantik untuk menentukan keupayaan pemohon untuk bekerja, maka responden mengambil keputusan untuk tidak melepaskan pemohon bersara atas sebab-sebab medikal. Pada 15 Oktober 1989 kesatuan tersebut telah memohon kepada Mahkamah Perusahaan di bawah s 33 (1) Akta Perhubungan Perusahaan 1967 untuk interpretasi art 47 perjanjian kolektif tersebut. Mahkamah Perusahaan telah memutuskan bahawa jikalau pun seorang doktor ataupun panel doktor telah memberikan laporan perubatan atas pemohon, keputusan muktamad samada untuk membenarkan pekerja-pekerjanya bersara atas sebab-sebab medikal adalah terletak dengan estet. Pada 24 Julai 1990, menerusi kesatuan tersebut, pemohon telah memfailkan satu aduan ketidakpatuhan di bawah s 56 Akta Perhubungan Perusahaan 1967 dengan menyatakan bahawa art 47 perjanjian kolektif dan Award Interpretasi tidak dipatuhi, setakat mana ianya berkaitan dengan pemohon. Mahkamah Perusahaan telah mendengar dan menolak permohonan ini melalui Award Penguatkuasaan yang sekarang dicabar oleh pemohon. Peguam pemohon telah menghujahkan bahawa Mahkamah Perusahaan telah salah mentafsirkan Award Penguatkuasaan. Mengikut pendapatnya, oleh kerana doktor-doktor telah mendapati bahawa pemohon adalah seseorang yang tidak berkeupayaan, maka dia patut dibenarkan bersara atas sebab-sebab medikal. Pemohon selanjutnya telah menghujahkan bahawa Mahkamah Perusahaan, dalam Award Penguatkuasaannya, telah mengambilkira perkara-perkara yang tidak relevan, iaitu art 47(a) perjanjian kolektif; juga bahawa oleh kerana Mahkamah Perusahaan dalam Award Penguatkuasaannya telah enggan mengambilkira s 14 Akta Pekerjaan 1955 dan juga peraturan 4 (1)(c) Peraturan (Faedah Pemberhentian dan Pampasan) Pekerjaan 1980, yang dibuat di bawah Akta Pekerjaan, maka Mahkamah Perusahaan telah gagal mengambil kira perkara-perkara yang relevan.

Diputuskan, menolak permohonan pemohon:

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- (1) Artikel 47 telah menetapkan prinsip-prinsip berikut: (i) apabila seorang pekerja memilih untuk bersara atas sebab-sebab medikal, pilihan beliau mestilah diluluskan oleh pihak estet dan beliau tidak boleh meninggalkan pekerjaannya atau bersara tanpa persetujuan pihak estet terlebih dahulu; (ii) samada seseorang

- pekerja itu berkeupayaan atau tidak adalah dipastikan oleh seorang doktor atau panel doktor yang dipersetujui oleh pihak estet dan pihak kesatuan; dan (iii) jikalau pun doktor atau panel doktor telah memberi satu laporan perubatan, keputusan muktamad untuk membenarkan seseorang pekerja itu bersara atas sebab-sebab medikal adalah terletak pada pihak estet (lihat ms 238E-G). A
- (2) Mahkamah Perusahaan telah tidak melakukan kesilapan bidang kuasa atas rekod ataupun kesilapan undang-undang. Persoalan ataupun isu keupayaan pekerja untuk bekerja mesti dipastikan oleh doktor ataupun panel doktor yang dipersetujui oleh estet ataupun kesatuan tersebut. Hanyalah setelah prasyarat dipenuhi dan dengan pertimbangan yang adil dan sewajarnya, pihak estet mestilah mengizinkan seseorang pekerja bersara atas sebab-sebab medikal (lihat ms 239A-B). B
- (3) Award Penguatkuasaan, ketika dibaca bersama dengan Award Interpretasi, telah dibuat dalam konteks pentafsiran art 47 perjanjian kolektif. Mahkamah Perusahaan dalam memberikan Award Penguatkuasaan adalah tertakluk di bawah s 33(4) Akta tersebut untuk mengikuti award interpretasi. Kedua-dua award tersebut adalah berkaitan dengan art 47 yang adalah sangat relevan, penting dan berkaitan. Maka tidak ada perkara-perkara yang tidak relevan yang telah dipertimbangkan (lihat ms 239D-E). C
- (4) Di dalam sesuatu aduan ketidakpatuhan di bawah s 56 Akta tersebut, Mahkamah Perusahaan tidak mempunyai bidang kuasa untuk meneliti Akta Perusahaan untuk mengenalpasti makna terma-terma yang diadukan (lihat ms 239G-H); *Dragon & Phoenix Bhd v Kesatuan Pekerja-Pekerja Perusahaan Membuat Textil dan Pakaian* [1991] 1 MLJ diikuti. D
- (5) Peraturan-Peraturan 1980 dan Akta Pekerjaan adalah perkara-perkara yang tidak relevan yang mana Mahkamah Perusahaan telah dengan wajarnya tidak mempertimbangkannya, terutama apabila perkara tersebut tidak dipohon di dalam aduan pemohon dan tiada sebarang keterangan yang telah dikemukakan untuk menyokong tuntutan tersebut (lihat ms 240D). E
- (6) Jikalau pun Peraturan-peraturan 1980 dan Akta Pekerjaan adalah terpakai, forum yang sepatutnya untuk membuat tuntutan di bawah Akta Pekerjaan adalah Jabatan Buruh mengikut permohonan di bawah s 69 Akta Pekerjaan. Mahkamah Perusahaan bukanlah satu forum untuk membuat tuntutan dibawah Akta Pekerjaan (lihat ms 240E-F). F

Notes

For cases on the interpretation of collective agreements, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 610-611. G

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A Cases referred to

Dragon & Phoenix Bhd v Kesatuan Pekerja-Pekerja Perusahaan Membuat Textil dan Pakaian Pulau Pinang & Anor [1991] 1 MLJ 89

Legislation referred to

- B** Employment Act 1955 s 14
Employment (Termination and Lay-Off Benefits) Regulations 1980
reg 4(1)(c), 14(3)
Industrial Relations Act 1967 ss 33(1), 56
- C** *Anand Ponnudurai (Lobo & Associates)* for the applicant.
P Jayasingam (Shearn Delamore & Co) for the respondent.

Cur Adv Vult

D Low Hop Bing JC: This is the applicant's application in encl 5 for, inter alia, an order of certiorari to quash the decision of the Industrial Court in Award No 230 of 1994 ('the Enforcement Award') — as well as an order of mandamus directing the Industrial Court to rehear the applicant's complaint.

E At the material time, the applicant was a member of the All Malayan Estates Staff Union ('AMESU') which had entered into a collective agreement ('the collective agreement') with the Malayan Agricultural Producers Association ('MAPA') (a trade union of employers of which the respondent was a member).

F The collective agreement was duly given cognizance by the Industrial Court and it is common ground that the applicant was covered by and was within the scope of the collective agreement.

By a letter dated 25 April 1989, the applicant resigned from the respondent's employ.

G On 15 October 1989, AMESU applied to the Industrial Court under s 33(1) of the Industrial Relations Act 1967 ('the Act') for an interpretation of art 47 of the collective agreement.

No doctor or panel agreed between the estate and AMESU had been appointed to determine the applicant's fitness to work.

H The applicant was not terminated by the respondent but had left without the prior approval of the estate.

The decision of the respondent was not to release the applicant on retirement on medical grounds.

Article 47 reads as follows:

I Article 47 — Termination of Employment On Medical Grounds

- (a) Where an employee disputes the conclusions of medical examination carried out by the employer's doctor, such an employee may be referred

to a doctor or a panel of doctors agreed upon by the employer and the AMESU. In the event of the employee being referred to a doctor or a panel of doctors, the conclusion of his doctor or panel of doctors shall be final and conclusive.

- (b) The termination benefits payable shall be those payable as redundancy benefits.

Upon careful consideration, the Industrial Court in Award No 55 of 1990 ('the Interpretation Award') held:

Article 47(a) does imply that the termination of employment on medical ground is initiated by the employer. If the employee is not satisfied, he cannot dispute the conclusions of the medical examination. This, however, does not mean that the employee himself cannot ask to be retired on medical grounds. If he is really sick, he may, as in the case of optional retirement, opt to retire (sic) on medical grounds, his option must necessarily be approved by the estate as he cannot just leave his employment or retire without the prior approval of the estate. If the employee is unfit for work, as determined by a doctor or a panel of doctors agreed upon by the estate and the union then, in all equity and good conscience, the estate must allow him to go on retirement on medical grounds. It appears that, on the facts presented to us, no such doctor or a panel of doctors were agreed upon by the estate and the union to give a final and conclusive verdict. Even if a doctor or a panel of doctors have given a medical report on the claimant, the final decision to release or not to release the employees on retirement on medical grounds must rest with the estate and we so hold accordingly.

I am in complete agreement with the above interpretation given by the Industrial Court. In my judgment, art 47 has established the following principles:

- (i) When an employee opts for retirement on medical grounds, his option must necessarily be approved by the estate as he cannot just leave his employment or retire without the prior approval of the estate;
- (ii) Whether or not an employee was unfit for work is to be determined by a doctor or panel of doctors agreed upon by the estate and the AMESU; and
- (iii) Even if a doctor or panel has given a medical report, the final decision to release the employee on retirement on medical grounds must rest with the estate.

Consequent upon the Interpretation Award handed down by the Industrial Court, the applicant had on 24 July 1990, through AMESU, filed a complaint of non-compliance under s 56 of the Act, stating that art 47 of the collective agreement and the Interpretation Award have not been complied with, in so far as it concerned the applicant. The applicant's complaint was duly heard and dismissed by the Industrial Court, vide the Enforcement Award which is now being challenged by the applicant herein. In this application, learned counsel for the applicant submitted that the Industrial Court had misconstrued the Interpretation Award. In his opinion, since the applicant was found unfit by all doctors, in all equity

A and good conscience, the applicant should have been allowed to retire on medical grounds. Learned counsel for the respondent thought otherwise.

B Having anxiously considered these two submissions, I hold that in arriving at its decision, the Industrial Court has not committed any jurisdictional error on the face of record or any error of law. In my judgment, the question or issue of the employee's fitness to work must first be determined by a doctor or panel of doctors *agreed upon by the estate and AMESU*. It is only after this pre requisite has been fulfilled that in all equity and good conscience, the estate must allow him to go on retirement on medical grounds. However it is to be noted that in this application, the facts clearly demonstrate that no such doctor or panel of doctors were agreed upon by the estate and AMESU, for the purpose of giving a final and conclusive verdict.

C Learned counsel for the applicant further submitted that the Industrial Court in the Enforcement Award had taken irrelevant matters into account, namely art 47(a). Learned counsel for the respondent contended to the contrary.

D After having closely scrutinized the Enforcement Award read together with the Interpretation Award, I conclude that the submission for the applicant is not sustainable. The Enforcement Award read together with the Interpretation Award was made in the context of the interpretation of art 47 in the collective agreement. The Industrial Court in handing down the Enforcement Award is obliged by s 33(4) of the Act to follow the Interpretation Award. Both these awards relate to art 47 which is most relevant, material and pertinent. I therefore hold that no irrelevant matters had been taken into account.

E Learned counsel for the applicant then submitted that since the Industrial Court in the Enforcement Award had refused to consider s 14 of the Employment Act 1955 ('the Employment Act') and also reg 4(1)(c) of the Employment (Termination and Lay-Off Benefits) Regulations 1980 ('the 1980 Regulations'), made under the Employment Act, the Industrial Court had failed to take relevant matters into consideration.

F In my view, this submission is devoid of merits. In this connection, I am supported by the Supreme Court in *Dragon & Phoenix Bhd v Kesatuan Pekerja-Pekerja Perusahaan Membuat Textil Dan Pakaian Pulau Pinang & Anor* [1991] 1 MLJ 89 where it was held that in a complaint of non-compliance under s 56 of the Act, the Industrial Court has no jurisdiction to embark on an examination of the Employment Act to determine the meaning of the term complained of.

G The Supreme Court, per Harun Hashim SCJ, stated:

I In a complaint of non-compliance with any term of a collective agreement or award under s 56 of the Industrial Relations Act 1967, the Industrial Court should, as a general rule, look at the terms of the contract by confining itself to within the four walls of the collective agreement or award and decide whether the term has or has not been complied with. It is a purely *enforcement* function. It should not embark on an expedition to examine the provisions of the Employment Act 1955 in order to determine

the meaning of the term complained of unless there is a specific reference to it because to do so would invoke the *interpretative* function of the court under s 33 of the Industrial Relations Act 1967 which is an entirely different exercise from that under s 56.

The Supreme Court added:

In the instant case, the matter came before the Industrial Court as a complaint of non-compliance with the first award under s 56 but the resulting second award is in substance an interpretative exercise with a detailed discussion on s 60A of the Employment Act 1955.

The Supreme Court concluded that as the issue sought to be determined by AMESU was a matter of interpretation and was not within the ambit of s 56 of the Act, the Industrial Court had thereby committed a jurisdictional error on the face of the record and the award was accordingly quashed.

Applying the principle enunciated by the Supreme Court to the facts of the instant case I am of the view that had the Industrial Court in the Enforcement Award attempted to arrive at a decision based on an examination and discussion of and finally a determination on the provisions of the 1980 Regulations and the Employment Act, it would have acted in excess of jurisdiction. The 1980 Regulations and the Employment Act were irrelevant matters which the Industrial Court had, quite rightly, refused to consider herein.

Further, in my judgment, even if s 14(3) and the 1980 Regulations were applicable, the proper forum for a claim under the Employment Act is the Labour Department pursuant to an application under s 69 of the Employment Act. The Industrial Court is not the forum for a claim under the Employment Act. In any event, s 14(3) and the 1980 Regulations were never pleaded in the applicant's complaint nor was any evidence adduced to support such a claim. That being the case, there is no basis or any necessity for the Industrial Court to consider these provisions.

Finally, it was contended that the Industrial Court's decision was perverse. Again, I do not think that this submission can hold water. The Industrial Court in the Interpretation Award and the Enforcement Award has considered all the reasonable factors which a reasonable tribunal would have considered and as such there is no evidence of any perverse decision at all.

In the light of the foregoing, I hold that the applicant's application cannot succeed and is hereby dismissed with costs.

Application dismissed with costs.

Reported by Izzaty Izzuddin

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